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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AMERICAN CAR CITY, SARL,

Plaintiff and Appellant,

v.

CHRIS KREIDEL et al.,

Defendants and Respondents.

G052586

(Super. Ct. No. 30-2014-00756051)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Di Cesare, Judge. Affirmed.

Michael J. Perry for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

American Car City, SARL (ACC) appeals from a judgment after the trial court entered default judgment in its favor as to one of three defendants but later denied ACC's request to correct the default judgment to include the other two defendants. ACC argues the trial court erred by denying its motion to correct the default judgment. We disagree and affirm the judgment.

## FACTS

In November 2014, ACC, a French company that imports cars to France from the United States, filed a complaint against West Coast Motors, Inc. (WCM), Kriedel, Inc. (Kriedel), and Chris Kriedel (Chris) alleging the following causes of action: breach of written contract; breach of implied in fact contract; monies had and received; breach of written note; promissory fraud; conversion; and rescission based upon misrepresentation and/or failure of consideration. The complaint alleged Chris was the majority owner of Kriedel and WCM, Kriedel did business as WCM, and they were alter egos. The complaint alleged a February 2012 written invoice established ACC purchased a truck and parts from WCM for \$48,000 and that ACC wired the money to Kriedel dba WCM and received \$3,500 worth of parts but no truck. The complaint also asserted there was a second contract, a handwritten note, between Chris and ACC from October 2013 that stated "Chris Kriedel of [WCM]" owed ACC \$44,500.00. Chris was served individually and on behalf of WCM and Kriedel.

ACC filed a request for entry of default against WCM, Kriedel, and Chris, and gave notice of entry of default the following week. At a case management conference where only ACC appeared, the trial court ordered a default prove-up hearing.

ACC filed a default judgment package, which included a request for court judgment against WCM, Kriedel, and Chris, a declaration from Herve Vallet, ACC's general manager, and the two contracts. In support of its request for a default judgment, ACC filed the following: declaration regarding prejudgment interest; statement of the case; proposed judgment; and request for dismissal of Doe defendants. The proposed

judgment listed WCM as a defendant and the box indicating there were additional defendants on Attachment 5a was checked. Attachment 5a listed Kreidel and Chris as additional defendants.

By minute order, the trial court ruled the prejudgment interest was slightly lower than ACC had calculated and ordered it to submit a new judgment with the correct interest. ACC's amended proposed judgment filed electronically listed WCM as defendant but did not include an Attachment 5a. A minute order dated June 12, 2015, states, "The [c]ourt finds judgment for [ACC] against [WCM]." The trial court entered judgment accordingly.

ACC filed a motion to correct the default judgment to include Kreidel and Chris as defendants asserting there was a clerical error because either the superior court, the electronic filing service, or ACC's counsel erred in not including Attachment 5a. The trial court denied the motion, explaining as follows: "There was no clerical error because the judgment reflects the [c]ourt's minute order of [June 12, 2015], finding only [WCM] to be liable to [ACC]. Therefore, the judgment cannot be amended. *In re Candelario* [(1970)] 3 Cal.3d 702, 705 . . . [(*Candelario*)]."

### DISCUSSION

ACC argues the trial court erred by denying its motion to correct the default judgment because of clerical error, i.e., the omission of Attachment 5a with the amended proposed judgment. Alternatively, ACC asserts the court abused its discretion in concluding only WCM was liable. Neither contention has merit.

"It is true that a court has the inherent power to correct clerical error in its records at any time so as to conform its records to the truth, but it may not amend a judgment to substantially modify it or materially alter the rights of the parties under its authority to correct clerical error. [Citation.] The difference between judicial and clerical error rests not upon the party committing the error, but rather on whether it was the deliberate result of judicial reasoning and determination. The distinction between

clerical error and judicial error is whether the error was made in rendering the judgment, or in recording the judgment rendered. (. . . *Candelario*[, *supra*,] 3 Cal.3d 702 . . . .)” (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1238.) Here, there was no clerical error. Any error must be considered judicial as the trial court stated it found only WCM liable. In other words, any error was in rendering the judgment, not in recording the judgment.

“Although by a default a defendant admits the allegations in the complaint, the defendant who fails to answer admits only facts which are well pleaded. [Citation.]’ [Citation.]” (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156.) ACC contends that because Kreidel and Chris defaulted, they admitted the material allegations, i.e., that each of them breached the contract. The trial court did not find Kreidel and Chris breached the contract. At most Kreidel’s and Chris’s failure to answer admits only well pleaded facts. ACC proceeded on the alter ego theory and asserted there was a “unity of interest and ownership between” WCM, Kreidel, and Chris. But the complaint includes no well pleaded facts that tend to establish such a unity of interest and ownership other than the general assertion they commingled funds. And on appeal, ACC does not argue Kreidel and Chris were liable under the alter ego theory. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [appellant must present relevant legal authority and reasoned argument on each point made].)

ACC relies on the October 2013 handwritten note apparently written by Chris. But the note states “Chris Kreidel of [WCM]” owes ACC \$44,500, and the signature block at the bottom of the page includes Chris’s name, both handwritten and printed, over WCM. Nowhere does the handwritten note state Chris is individually liable for the \$44,500. The trial court could have reasonably relied on the note to conclude Chris was memorializing that WCM was liable for the reduced amount of \$44,500 after subtracting the \$3,500 credits. And nothing in Vallet’s declaration tends to demonstrate Chris was personally liable. ACC has not demonstrated the trial court abused its

discretion in concluding WCM was solely liable for the outstanding debt and not Kreidel and/or Chris.

#### DISPOSITION

The judgment is affirmed. Because respondent did not appear on appeal, no party shall recover costs on appeal.

O'LEARY, P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.